

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9324 of 1998

with

SPECIAL CIVIL APPLICATION No 9328 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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RELIANCE PETROLEUM LTD

Versus

UNION OF INDIA  
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Appearance:

1. Special Civil Application No. 9324 of 1998  
MR RS SANJANWALA for Petitioners  
MR PB MAJMUDAR for Respondent No. 1
  2. Special Civil ApplicationNo 9328 of 1998  
MR NS SHETH for Petitioners
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CORAM : MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE A.L.DAVE

Date of decision: 10/11/98

## ORAL JUDGEMENT

#. Rule. Mr.P.B.Majmudar, standing counsel for the Central Government for the respondents appears and waives service of notice of rule. In the facts and circumstances of the cases, this matter is taken for final hearing today.

#. In both these petitions, a grievance was made that though the appeals were filed before the appellate authority and appeals are pending as also applications for stay, neither appeals nor application for interim relief have been disposed of by the appellate authority and on the other hand, the Department has started coercive recovery proceedings. Relying upon the decision of the Division Bench of this Court in DCW vs. COMMISSIONER (APPEALS) AND OTHERS 1997 (2) G.L.R. 913 and also other decisions, it was contended that it was not open for the respondent authorities to start or effect coercive recovery, when the orders passed by the authorities are challenged and appeals are pending, as also stay applications have not been disposed of. Almost in similar circumstances, this Court has taken the view and it was incumbent on the part of the appellate authority either to dispose of the main matter i.e. appeal or in any case interim application for stay. Till interim application for stay is disposed of, it is not open to the Department to start or continue the coercive recovery.

#. In view of the above decisions, in our opinion, both the petitions deserve to be allowed and accordingly allowed. Rule is made absolute. It is directed that till the applications for stay are decided by the appellate authority, no coercive proceedings will be effected by the Department. So far as the SCA No. 9328 of 1998 is concerned, the question relates to encashment of bank guarantee. The learned counsel for the petitioner states that till today, bank guarantee is not encashed. In view of the fact that now on that statement, if the same is not encashed, it will not be encashed till the application is decided. This order will be applicable to the respondent Bank which is already party to the proceedings and according to the learned counsel for the petitioner, the respondent bank is already served.

#. Mr.Majmudar states that the appellate authority will decide the application for stay within one month. As is

already clarified till the applications are not decided, no coercive recovery will be effected. We may state that we have not entered into merits of the matter and express no opinion on that aspect. Rule is made absolute to the above mentioned extent. In the facts and circumstances, no order as to cost. This is without prejudice to the rights and contentions of the parties before the appellate authorities. Direct Service.

(C.K.Thakkar,J.)

Date : 10-11-1998 (A.L.Dave, J. )

(KPP)